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PP v. TAREK OBAID & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD SHAHRIR MOHD SALLEH J
[CRIMINAL APPLICATION NO: WA-44-133-07-2020]
20 MARCH 2025

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Abstract – *An application under s. 53 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 is a preliminary measure intended to maintain the status quo while further legal proceedings are pursued. This provision serves as an interim safeguard to prevent the dissipation of assets that may ultimately be subject to forfeiture. A prohibition order issued under this section does not constitute a final adjudication of the rights of the parties. Instead, it functions as a protective mechanism to ensure that potentially illicit assets remain within the court's jurisdiction until the appropriate legal determinations are made. Given the interim nature of a prohibition order under s. 53, the legal threshold for granting such an order is lower than that required for a final forfeiture order. The court is not required to establish, beyond reasonable doubt, that the subject property is linked to an offence. Instead, the court need only be satisfied, on the balance of probabilities, that the property falls within one of the statutory categories set out in s. 53(1).*

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CRIMINAL LAW: *Money laundering – Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1) & 53 – Prohibition order – Application by Public Prosecutor to prohibit dealing with certain sums of money – Monies held in bank accounts outside Malaysia – Monies in accounts subject matter or evidence relating to commission of offence of money laundering – Whether perpetrator ought to be restrained from dealing with monies – Whether prohibition order ought to be issued – Whether property in question fell within one of categories specified in paras. (a) to (d) of s. 53(1)*

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The 1MDB Board of Directors met in 2009 to discuss a joint-venture with Petrosaudi International Limited (PSI), a Saudi oil services company. The Board also met with 1MDB-PetroSaudi Limited ('JVCo'), a British Virgin Islands entity. A special Board meeting, with Low Taek Jho ('Jho Low') present, approved the transfer of USD1 billion from 1MDB to JVCo to subscribe to shares. A joint-venture agreement ('JVA') was signed with 1MDB investing USD1 billion for a 40% equity stake, while a PetroSaudi subsidiary would inject assets valued at approximately USD2.7 billion. However, when 1MDB transferred the USD1 billion, only USD300 million was deposited into JVCo's account; the remaining USD700 million was diverted to Good Star Limited, which was controlled by Jho Low. By

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January 2010, the entire USD300 million in JVCo's account had been transferred to various entities within the PetroSaudi corporate structure. Notably, USD185 million moved from PSI's account to PetroSaudi Oil Services Ltd ('PSOSL'), where the first respondent was a director and signatory. Between January and February 2010, PSOSL used approximately USD179.6 million to finance an oil and gas drilling project in Venezuela with Petroleos de Venezuela SA ('PDVSA'), and USD46.9 million to partially pay for a drillship named the Neptune Discoverer. In April 2010, PetroSaudi Oil Services (Venezuela) Limited ('PSOS-VZ') was incorporated to operate rigs in Venezuelan waters. 1MDB later divested its entire 40% stake in JVCo, receiving USD1.2 billion in debt notes issued by JVCo. In August 2010, a second drillship, the Saturn, was acquired for USD260 million by Saturn Drillship Pte Ltd ('PSI Singapore'), a PetroSaudi special purpose vehicle. The Saturn's ownership was subsequently transferred through bareboat charters to other PetroSaudi entities, eventually being used by the third respondent for drilling services for PDVSA. In June 2012, 1MDB, through its subsidiary 1MDB International Holdings Ltd ('1MDB IHL'), converted its debt notes into a 49% equity stake in PSOSL. In October 2012, 1MDB sold this PSOSL stake to Bridge Partners International Investment Ltd ('BPII') for USD2.318 billion in promissory notes, which were then converted into Bridge Fund units. In April 2014, Petrosaudi International, 1MDB-IHL, and 1MDB formally terminated their shareholders' agreement for PSOSL.

From 2015, the third respondent and PDVSA became involved in arbitration proceedings concerning their drilling contract, as PDVSA instructed the Saturn to cease operations and refused payments. While arbitration was ongoing, payments under a standby letter of credit from Novo Banco were placed into an escrow account. In 2020, the arbitral tribunal ruled in favor of the third respondent, awarding approximately USD380 million. The third respondent became entitled to the funds in the escrow account, which stood at approximately USD329 million. The present application, under s. 53 of the Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUA'), sought a prohibition order against the respondents to prevent them from dealing with these arbitration award funds, which were held in accounts in the United Kingdom by the fourth and fifth respondents. Objecting to the application, the respondents argued that: (i) the funds held in the escrow account, and those maintained by the fifth respondent, did not constitute proceeds related to an offence under s. 4(1) of the AMLATFPUA. There was no connection between the subject funds and any money laundering offence; (ii) there was no link between the third respondent and 1MDB. The third respondent had never engaged in any transaction involving 1MDB and its business operations were independent of any alleged wrongdoing associated with 1MDB; (iii) the third respondent was a legally distinct corporate entity. The principle of separate

legal personality applied and there were no legal grounds to justify the piercing of the corporate veil. Any attempt to attribute liability to the third respondent for the alleged offences of other entities was misconceived in law; and (iv) the drilling contract, which resulted in the arbitral award, was executed for a legitimate economic purpose. The revenues derived from the contract represented lawful business proceeds. The funds flowing from the arbitration award were not tainted by illegality and did not fall within the scope of the AMLATFPUA.

Held (granting prohibition order):

(1) Section 4(1)(a) of the AMLATFPUA criminalises any transaction involving the proceeds of an unlawful activity, whether undertaken directly or indirectly. Section 4(1)(b) further prohibits the acquisition, receipt, possession, transfer, conversion, exchange, disposal or use of such proceeds. The evidence illustrated how 1MDB funds were funnelled through various corporate entities linked to the first respondent. These funds were subsequently used to finance the purchase and operation of drilling ships. The revenues generated from these operations led to the arbitration award currently held by the fourth and fifth respondents. The applicant had sufficiently established that the subject funds were related to an offence under s. 4(1) of the AMLATFPUA. (paras 46 & 48)

(2) The third respondent, along with other entities within the PetroSaudi corporate group, appeared to have been part of a complex corporate structure which effectively obscured the connection between the drilling operations and the 1MDB funds that were used to finance them. The mere existence of separate legal entities did not, in and of itself, break the chain linking the arbitration award to the original 1MDB funds. The initial capital required to establish the drilling operation was, at least in part, derived from funds that could be traced to 1MDB. Without this initial injection of capital, the third respondent would not have been in a financial position to enter into the drilling contract with PDVSA. The source of the initial financing remained relevant in determining whether the arbitration award and the funds held by the fourth and fifth respondents could be linked to an offence under s. 4(1) of the AMLATFPUA. A sufficient connection therefore existed between the third respondent and 1MDB. (paras 52-54)

(3) The corporate structure of the PetroSaudi group was not merely a legitimate business arrangement but was instead utilised in a manner that concealed the true origins and movement of funds. The third respondent's role within this structure could not be viewed in isolation. The timing of the third respondent's incorporation, occurring after the alleged fraudulent misappropriation of 1MDB funds, did not preclude

the possibility that it was established as part of a continuing scheme to facilitate the laundering of illicit proceeds. The transactions involving the Discoverer and Saturn, the flow from 1MDB and the financial integration of PSOSL and its subsidiaries all pointed to a broader scheme. There were sufficient grounds to look beyond the separate legal personality of the third respondent. (paras 60, 63 & 64)

(4) The Discoverer was purchased using funds that could be directly traced to 1MDB's USD300 million investment in JVCo. The acquisition of the Saturn was facilitated by the existence of the Discoverer contract, which was itself capitalised using 1MDB funds. This sequence of transactions indicated that the financial foundation of the third respondent's drilling operations was significantly reliant on capital derived from 1MDB. Therefore, the funds held by the fourth and fifth respondents were linked to an offence under s. 4(1) of the AMLATFPUA. The fact that the drilling contract itself constituted a lawful economic activity did not override the critical finding that the operations were established, at least in part, using funds that could be traced to the fraudulent misappropriation of 1MDB assets. The statutory requirements for issuing a prohibition order under s. 53 of the AMLATFPUA were satisfied. (paras 70 & 71)

Case(s) referred to:

Gurbachan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals [2015] 1 CLJ 719 FC ***(refd)***

Noor Ismahanum Mohd Ismail v. PP [2018] 10 CLJ 597 CA ***(refd)***

Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors [2021] 4 CLJ 821 FC ***(refd)***

PP v. Awalluddin Sham Bokhari [2018] 1 CLJ 305 FC ***(refd)***

Prest v. Petrodel Resources Ltd [2013] 2 AC 415 ***(refd)***

R v. Seager; R v. Blatch [2010] 1 WLR 815 ***(refd)***

Salomon v. A Salomon & Co Limited [1897] AC 22 ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1)(a), 53(1)(a), (2)(a), 56, 70(1)

For the applicant - Norinna Bahadun & Sarah Khalilah; DPPs
For the 1st respondent - Mohd Yusof Zainal Abiden; M/s Mohd Yusof Zainal Abiden
For the 2nd-5th respondents - Alex Tan Chie Sian; M/s Wong Kian Kheong

Reported by Najib Tamby

JUDGMENT

Ahmad Shahrir Mohd Salleh J:

Introduction

[1] This was an application by the Public Prosecutor for a prohibition order against the respondents pursuant to s. 53 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities

Act 2001 ("AMLATFPUA"). The Public Prosecutor sought an order to prohibit the respondents from dealing with certain sums of money held in two bank accounts outside Malaysia.

[2] The first account is maintained by the fourth respondent at Natwest Bank in London, United Kingdom. The second account is maintained by the fifth respondent at Barclays Bank in the United Kingdom. The Public Prosecutor took the position that the monies in both accounts are the subject matter or evidence relating to the commission of the offence of money laundering under sub-s. 4(1) of the AMLATFPUA. Based on investigations, the Public Prosecutor was satisfied that the respondents should be restrained from dealing with the monies under a prohibition order issued pursuant to sub-s. 53(1) of the AMLATFPUA.

Background Facts

The Parties

[3] The sequence of events began with the establishment of Terengganu Investment Authority ("TIA") in February 2009. TIA was the country's first state-owned wealth fund. Initially, it was owned by the State of Terengganu. However, following the State's withdrawal, TIA underwent a rebranding exercise. Seven months after its inception, it was renamed as 1Malaysia Development Berhad ("1MDB"). Upon this transition, 1MDB became wholly-owned by the Federal Government through the Minister of Finance (Incorporated).

[4] At the material time, Dato' Sri Mohd Najib bin Tun Haji Abdul Razak ("DSNR") held the position of Prime Minister of Malaysia. Concurrently, he served as the Minister of Finance and the Chairman of the Board of Advisors for 1MDB. By virtue of these positions, DSNR exercised significant control over 1MDB's investment decisions and business operations.

The 1MDB-PetroSaudi Joint Venture

[5] On 18 September 2009, the 1MDB Board of Directors convened a meeting at the Royale Chulan Hotel in Kuala Lumpur. The primary agenda was to deliberate on a proposed joint venture with PetroSaudi International Limited ("PSI"). PSI was a private oil services company incorporated in Saudi Arabia. PSI maintained offices in the United Kingdom. The first respondent, Tarek Obaid, was the co-founder and Chief Executive Officer of PSI. At the time of its incorporation, the first respondent held 50% of PSI's shares. By 2013, the first respondent became the sole shareholder of PSI.

[6] Notably, on the same day that the 1MDB Board met, a company named 1MDB-PetroSaudi Limited ("JVCo") was incorporated in the British Virgin Islands. This incorporation was undertaken by PetroSaudi Holdings (Cayman) Limited, a corporate entity linked to the first respondent. The

incorporation of JVCo took place before the execution by 1MDB of the joint venture agreement. This raised questions about the sequence of events leading to the formalisation of the joint-venture.

[7] On 26 September 2009, 1MDB held a special board meeting. Low Taek Jho ("Jho Low") was also present at this meeting. In this meeting, 1MDB Board passed a resolution authorising the transfer of USD1 billion from 1MDB to JVCo. The resolution directed that the funds be remitted through a foreign exchange transaction with Deutsche Bank (Malaysia) Berhad. The purpose of this transfer was to subscribe to 1 billion ordinary shares in JVCo.

[8] The joint venture agreement ("JVA") was formally executed on 28 September 2009. The parties to the agreement were 1MDB, PetroSaudi Holdings (Cayman) Limited, and JVCo. Under the terms of the JVA, 1MDB agreed to invest USD1 billion into JVCo in exchange for a 40% equity stake. In return, a PetroSaudi subsidiary undertook to inject certain assets into JVCo. These assets were represented as being valued at approximately USD 2.7 billion. The PetroSaudi subsidiary claimed that these assets consisted of what it termed as "energy interests in Turkmenistan sector of the Caspian Sea and the Argentinean provinces of Rio Negro and Chubut". The first respondent signed the JVA on behalf of the PetroSaudi subsidiary.

[9] The JVA contained a clause that required JVCo to pay PetroSaudi USD 700 million by 30 September 2009. That was only within two days after the JVA was signed. This payment was purportedly intended as a repayment for a "five-day loan" that PetroSaudi had allegedly extended to JVCo on 25 September 2009. That was just three days prior to the execution of the JVA.

The Diversion Of Funds

[10] On 30 September 2009, 1MDB proceeded with the transfer of USD1 billion to JVCo. However, not the entire amount was deposited into JVCo's account is authorised by the 1MDB resolution of 26 September 2009. Out of the USD1 billion, only USD300 million was credited into JVCo's account at J.P. Morgan (Suisse). The remaining USD700 million was instead diverted and transferred to an account at RBS Coutts Bank in Zurich. This account was registered under the name of Good Star Limited ("Good Star Account"). Contrary to the understanding of 1MDB officials, Good Star was not a subsidiary of PetroSaudi. It was controlled by Jho Low.

[11] By 12 January 2010, the entire USD 300 million deposited into JVCo's account had been transferred to various entities under the PetroSaudi corporate structure. A significant transaction occurred on 15 January 2010 when USD185 million was moved from PSI's J.P. Morgan account to

another J.P. Morgan account in the name of PetroSaudi Oil Services Ltd. ("PSOSL"). The first respondent was one of the directors of PSOSL and the sole authorised signatory of PSOSL's accounts.

The Drilling Ships And PDVSA Contracts

[12] Between 20 January 2010 and 1 February 2010, PSOSL utilised approximately USD179.6 million to finance an oil and gas drilling project in Venezuela. This project was conducted in collaboration with Petroleos de Venezuela SA ("PDVSA"), the Venezuelan State-owned oil company and was known as the Mariscal Sucre drilling project. A portion of these funds, amounting to USD46.9 million, was used to make a partial payment for the acquisition of a drillship named the Neptune Discoverer ("Discoverer").

[13] On 19 April 2010, the third respondent, PSOS-VZ, was incorporated in Barbados. The stated purpose of its incorporation was to operate drilling rigs in Venezuelan territorial waters. On 17 May 2010, the third respondent assumed operational control of the Discoverer from PSOSL.

[14] On 14 June 2010, 1MDB divested its entire 40% stake in JVCo. In exchange, 1MDB received USD1.2 billion in debt notes issued by JVCo. These debt instruments were issued under an Islamic financing structure known as a Murabaha Financing Agreement ("MFA"). Pursuant to the MFA, 1MDB also committed to extending an additional loan facility of up to USD1.5 billion to JVCo.

[15] On 10 August 2010, a second drillship named the Saturn was acquired by Saturn Drillships Pte Ltd. ("PSI Singapore"). PSI Singapore was a special purpose vehicle incorporated in Singapore under the PetroSaudi corporate group. The purchase price of the Saturn was USD260 million. The acquisition was financed partly through a USD13 million deposit. The applicant contends that these funds originated from the proceeds of the Discoverer's operations, which in turn were funded using 1MDB monies. The remainder of the purchase price was financed through bond issuances by PSOS Finance Limited.

[16] PSI Singapore subsequently transferred ownership of the Saturn to PetroSaudi Drillships Cooperatief U.A. ("PSI Netherlands") through a Bareboat Charter arrangement. PSI Netherlands then transferred the vessel to the third respondent through a second Bareboat Charter. The third respondent utilised the Saturn to perform drilling services for PDVSA under a drilling contract executed on 30 September 2010.

[17] On 1 June 2012, 1MDB converted its Murabaha debt notes into a 49% equity stake in PSOSL. This transaction was undertaken through 1MDB International Holdings Ltd ("1MDB-IHL"), a wholly-owned subsidiary of 1MDB. Notably, according to the applicant, despite holding only a 49% stake in PSOSL, 1MDB was entitled to 100% of the economic benefits derived from PSOSL's operations.

[18] In October 2012, 1MDB divested its stake in PSOSL to Bridge Partners International Investment Ltd ("BPII"). The sale consideration was USD2.318 billion which was received in the form of promissory notes. These promissory notes were subsequently converted into Bridge Fund units of equivalent value. On 8 April 2014, PetroSaudi International executed a deed of termination with 1MDB-IHL and 1MDB. This deed terminated the shareholders agreement governing their relationship as shareholders of PSOSL.

The Arbitration Award

[19] From 2015, the third respondent and PDVSA became embroiled in arbitration proceedings concerning the drilling contract. The dispute arose after PDVSA instructed the Saturn to cease operations and refused to compensate the third respondent for certain services rendered. The arbitration was conducted under the UNCITRAL rules.

[20] While the arbitration was ongoing, payments under a standby letter of credit ("SBLC") issued by Novo Banco (bank) in Portugal, were placed into an escrow account held by the fourth respondent. The SBLC was issued to guarantee PDVSA's payments for services provided by the third respondent.

[21] On 17 July 2020, the arbitral tribunal rendered a final award in favour of the third respondent against PDVSA. The award amounted to approximately USD380 million. As part of the enforcement of this award, the third respondent was entitled to the entirety of the funds held in escrow by the fourth respondent. At the material time, the funds in the escrow account stood at approximately USD329 million.

The Scope Of The Application

[22] The present application under s. 53 of AMLATFPUA concerns these arbitration award funds which are currently held by the fourth and fifth respondents.

Analysis And Findings

The Legal Framework

[23] In interpreting the statutory framework, this court finds that sub-s. 53(2) of the AMLATFPUA does not impose an onerous burden on the court. The provision merely requires the court to be satisfied that the property in question falls within one of the categories specified in paras. (a) to (d) of sub-s. 53(1). If the evidence establishes that the property satisfies any one of these categories, the court is mandated to issue a prohibition order. This order prevents the person who holds the property or with whom the property is deposited from dealing with it. The court has no discretion to refuse the order once the statutory criteria are met.

[24] In the present application, the Public Prosecutor contends that the subject property falls within the scope of sub-s. 53(1)(a) of the AMLATFPUA. This provision applies where the property constitutes the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1) of the AMLATFPUA. Subsection 4(1) of the Act criminalises money laundering.

[25] This court notes that the Public Prosecutor has not specifically identified the precise money laundering offence for which the subject property serves as evidence. However, this omission is not fatal to the application. The statutory framework of sub-s. 53(2) does not impose such a requirement. The provision merely requires the Public Prosecutor to establish, by way of affidavit evidence, that the property constitutes the subject-matter or evidence of an offence under sub-s. 4(1). The language of the statute is clear and unequivocal. This court is not at liberty to read into the provision requirements that are not expressly stated. The role of the court is to apply the law as enacted by the legislature, not to engage in judicial legislation.

[26] Before addressing the substantive arguments raised by the parties, it is necessary to consider the legal principles that govern this application. Section 53 of the AMLATFPUA confers upon the Public Prosecutor the authority to apply for a prohibition order. This order may be sought against any person who holds property outside Malaysia if the Public Prosecutor is satisfied that the property falls within any of the categories specified in sub-s. 53(1).

These categories are as follows:

(i) the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1) or a terrorism financing offence;

(ii) terrorist property;

(iii) the proceeds of an unlawful activity; or

(iv) the instrumentalities of an offence.

[27] Where the court is satisfied that the property falls within any of the prescribed categories, sub-s. 53(2) imposes a mandatory duty on the court. The provision states that the court "shall make an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property". The use of the word "shall" clearly excludes any exercise of discretion when the necessary statutory requirements have been met.

[28] In this application, the applicant relies specifically on sub-s. 53(1)(a). The applicant contends that the funds held by the fourth and fifth respondents constitute the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1) of the AMLATFPUA.

[29] Subsection 4(1) of the AMLATFPUA establishes the offence of money laundering. It provides as follows:

> **Offence of money laundering**
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> 4. Any person who –
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> (a) engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence;
>
> (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence;
>
> (c) removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or
>
> (d) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence, commits a money laundering offence and shall on conviction be liable to imprisonment for a term not exceeding fifteen years and shall also be liable to a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million ringgit, whichever is the higher.

[30] The standard of proof applicable to applications under s. 53 is set out in s. 70(1) of the AMLATFPUA.

Section 70(1) of the AMLATFPUA reads:

> **Standard of proof**
>
> 70. (1) Any question of fact to be decided by a court in proceedings under this Act shall be decided on the balance of probabilities.

[31] This evidentiary threshold aligns with the standard applicable in civil proceedings. The applicant is not required to prove its case beyond a reasonable doubt. Instead, the applicant must demonstrate, on a balance of probabilities, that the property falls within one of the categories enumerated in sub-s. 53(1). This means that the court must be satisfied that it is more probable than not that the property in question is linked to an offence under sub-s. 4(1).

[32] Having set out the relevant legal framework, this court now proceeds to consider the arguments advanced by both parties.

The Respondents' Objections To The Application

[33] The respondents, particularly the third respondent, raised multiple objections to the present application. These objections challenge the legal and factual basis upon which the Public Prosecutor seeks the prohibition order. These objections can be categorised into four main arguments:

A (i) the funds held in the escrow account and those maintained by the fifth respondent do not constitute proceeds related to an offence under sub-s. 4(1) of the AMLATFPUA. The respondents argue that there is no evidential basis to establish a connection between the subject funds and any money laundering offence,

B (ii) there is no direct or indirect link between the third respondent and 1MDB. The third respondent contends that it has never engaged in any transaction involving 1MDB and that its business operations are independent of any alleged wrongdoing associated with 1MDB,

C (iii) the third respondent is a legally distinct corporate entity. The respondents submit that the principle of separate legal personality applies and there are no legal grounds to justify piercing the corporate veil. They contend that any attempt to attribute liability to the third respondent for the alleged offences of other entities is misconceived in law, and

D (iv) the drilling contract that resulted in the arbitral award was executed for a legitimate economic purpose. The respondents maintain that the revenues derived from the contract represent lawful business proceeds. They argue that the funds flowing from the arbitration award are not

E tainted by illegality and do not fall within the scope of the AMLATFPUA.

[34] This court shall now proceed to examine each of these objections in turn.

F *Whether The Monies Are Related To An Offence Under Sub-s. 4(1) Of AMLATFPUA*

[35] The first and third respondents argue that the applicant has failed to establish that the funds held by the fourth and fifth respondents are connected to an offence under sub-s. 4(1) of the AMLATFPUA. In their submissions, they contend that the investigating officer, in his affidavit, merely asserted

G that he had reasonable grounds to believe that the funds form part of the subject matter or evidence pertaining to or in connection with the conspiracy to defraud and/or fraud against 1MDB. However, they highlight that the affidavit does not provide a clear and specific explanation as to how these funds relate to a money laundering offence under sub-s. 4(1) of the

H AMLATFPUA.

[36] The respondents further submitted that conspiracy to defraud and fraud are not offences under sub-s. 4(1) of the AMLATFPUA. On this basis, they argue that the applicant's reliance on these offences to justify the prohibition order is legally flawed and misconceived.

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[37] In addressing this argument, this court finds guidance in the decision of the Court of Appeal in *Noor Ismahanum Mohd Ismail v. PP* [2018] 10 CLJ 597; [2019] 2 MLJ 536; [2018] 3 AMR 74; [2018] AMEJ 0160; [2018] 1 SSLR 285. In that case, His Lordship the Honourable Abdul Rahman Sebli JCA (now CJ (Sabah and Sarawak)) in delivering the judgment of the court said as follows:

> [19] Thus, if the judge in an application under s. 56(1) finds it to be more probable than not that the property is derived from a transaction that involves 'the proceeds of an unlawful activity', that will be sufficient for him to make an order of forfeiture under s. 56(2). There is no need for him to be satisfied 'beyond any reasonable doubt' that the property is derived from an 'unlawful activity'.

[38] Although the cited case concerned an application under s. 56 of the AMLATFPUA, the underlying legal principle applies equally to applications under s. 53. Both provisions require the court to determine whether the property in question falls within the statutory categories set out in the Act. The primary difference between the two provisions lies in the type of order to be granted.

[39] Upon considering the evidence before this court, it is evident that the applicant has meticulously traced the flow of 1MDB funds. The evidence demonstrates that substantial sums were channelled through various entities controlled by or linked to the first respondent. These transactions ultimately resulted in the acquisition of the Discoverer and subsequently the Saturn, both of which were utilised by the third respondent in its drilling operations. The arbitration award, which forms the subject matter of this application, was derived from those very drilling activities.

[40] The applicant has provided a detailed analysis of the movement of USD300 million from IMDB's initial USD 1 billion investment in JVCo. By 12 January 2010, these funds had been entirely withdrawn from JVCo. A portion of USD185 million was later utilised by PSOSL, a company under the PetroSaudi corporate structure, to finance the Mariscal Sucre drilling project in Venezuela. Part of these funds were allocated towards the purchase of the Discoverer, which was subsequently operated by the third respondent.

[41] The purchase of the Saturn, which later became the subject of the arbitration award, was primarily financed through bonds issued by PSOS Finance Limited. However, the applicant has submitted evidence indicating that the initial USD13 million deposit for the Saturn originated from revenues generated by the operations of the Discoverer. Given that the Discoverer was funded using monies traceable to 1MDB, the applicant contends that these funds were effectively derived from proceeds of unlawful activity. Furthermore, the applicant contends that the bond issuance, which covered the majority of the Saturn's purchase price, would not have been possible without the pre-existing Discoverer contract, which was capitalised using 1MDB funds.

[42] In the case of *PP v. Awalluddin Sham Bokhari* [2018] 1 CLJ 305; [2018] 1 MLRA357; [2018] 2 MLJ 401; [2017] 8 AMR 533; [2017] AMEJ 1425, the Federal Court considered the standard of proof applicable to forfeiture applications under s. 56 of AMLATFPUA. At para. [31], the apex court observed:

> [31] In an application for an order of forfeiture of property under s. 56(1) where there is no prosecution, the standard of proof to determine whether the property has been obtained as a result of or in connection with an offence under s. 4(1) is the standard of proof required in civil proceedings: See s. 56(4) of the Act. Any question of fact to be decided by the court in proceedings under the Act shall be decided on the balance of probabilities: See s. 70(1) of the Act.

[43] Although the case pertained to s. 56, the principles it sets forth regarding the standard of proof are equally applicable to applications under s. 53. Both provisions necessitate that the court be satisfied, on a balance of probabilities, that the property in question falls within one of the categories prescribed by the AMLATFPUA.

[44] Applying this evidentiary standard, this court is satisfied that the applicant has demonstrated, on a balance of probabilities, that the funds held by the fourth and fifth respondents are linked to a money laundering offence under sub-s. 4(1) of the AMLATFPUA. The evidence before this court establishes a pattern of financial transactions indicative of an effort to conceal and integrate funds derived from 1MDB into ostensibly legitimate business ventures. These transactions culminated in the acquisition and operation of the drilling vessels which subsequently resulted in the arbitration award funds presently held by the fourth and fifth respondents.

[45] Respectfully, in my considered view the respondents' contention that conspiracy to defraud and fraud are not offences under sub-s. 4(1) of the AMLATFPUA is misguided. The applicant is not asserting that conspiracy to defraud or fraud itself constitutes money laundering. Rather, the applicant's case is that the subsequent handling, processing and utilisation of funds obtained through fraudulent means amount to money laundering as defined under sub-s. 4(1).

[46] Subsection 4(1)(a) of the AMLATFPUA criminalises any transaction involving the proceeds of an unlawful activity, whether undertaken directly or indirectly. Subsection 4(1)(b) further prohibits the acquisition, receipt, possession, transfer, conversion, exchange, disposal or use of such proceeds. The applicant has presented evidence suggesting that the respondents engaged in transactions involving funds misappropriated from 1MDB. The respondents further acquired, received, possessed and utilised these proceeds to finance drilling operations which subsequently resulted in the arbitration award funds now at issue.

[47] Money laundering schemes frequently involve intricate layers of financial transactions designed to obscure the origin of illicit funds. In such instances, it is necessary to trace funds through multiple entities and transactions in order to establish their nexus with unlawful activity.

[48] In the present case, the applicant has undertaken precisely such an exercise. The evidence illustrates how 1MDB funds were funnelled through various corporate entities linked to the first respondent. These funds were subsequently used to finance the purchase and operation of drilling ships. The revenues generated from these operations led to the arbitration award currently held by the fourth and fifth respondents. Given the cumulative effect of this evidence, this court finds that the applicant has sufficiently established that the subject funds are related to an offence under sub-s. 4(1) of AMLATFPUA.

Whether There Is A Link Between The Third Respondent And 1MDB

[49] The third respondent asserts that no connection exists between itself and 1MDB. It contends that it has never received any funds from 1MDB, nor has it been the recipient of any monies that can be traced back to 1MDB. Additionally, the third respondent argues that it did not require any financial assistance from 1MDB to execute its drilling contract with PDVSA. It claims that the contract was entirely self-funding and that the revenues generated from its drilling operations were independent of any financial contributions linked to 1MDB.

[50] While it may be correct that the third respondent did not directly receive funds from 1MDB, this fact alone does not sever the link between its drilling operations and the misappropriated 1MDB funds. The applicant has presented compelling evidence that traces a series of financial transactions connecting the third respondent's drilling operations to 1MDB funds. These transactions ultimately facilitated the acquisition and operation of the drilling vessels used by the third respondent. The crucial issue is not whether the third respondent directly received 1MDB funds, but rather whether the capital used to establish and sustain its drilling operations can be traced to the funds originating from 1MDB.

[51] In *Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors* [2021] 4 CLJ 821; [2021] 3 MLJ 622; [2021] AMEJ 0415; [2021] 4 MLRA 211, the Federal Court examined the circumstances in which it is appropriate to lift the corporate veil. The apex court made the following factual observations:

> [64] Put another way, the plaintiff enjoyed a legal right against Tony Ong, who is in control of PS Bina, which exists independently of the company's involvement. Perfect Solutions was at all times the agent of Tony Ong that enabled Tony Ong to benefit from the evasion of the debt due and owing to the plaintiff.

A [65] PS Bina was formed so that its separate legal personality would defeat the enforcement of its debt. If so, the court is entitled to pierce the corporate veil.

[52] In the present case, the evidence before this court suggests a similar pattern of conduct. The third respondent, along with other entities within the B PetroSaudi corporate group, appears to have been part of a complex corporate structure. This structure effectively obscured the connection between the drilling operations and the 1MDB funds that were used to finance them. The mere existence of separate legal entities does not, in and of itself, break the chain linking the arbitration award to the original 1MDB C funds. The corporate veil cannot be used as a shield to prevent scrutiny where the evidence demonstrates that the structure of the corporate entities was designed to facilitate the movement and concealment of tainted funds.

[53] Additionally, the third respondent's assertion that the drilling contract was entirely self-funding disregards a crucial aspect of the financial evidence. D The initial capital required to establish the drilling operations was, at least in part, derived from funds that can be traced to 1MDB. Without this initial injection of capital, the third respondent would not have been in a financial position to enter into the drilling contract with PDVSA. The financial sustainability of the drilling contract does not negate the fact that its E foundation was built on funds misappropriated from 1MDB. The source of the initial financing remains relevant in determining whether the arbitration award and the funds held by the fourth and fifth respondents can be linked to an offence under sub-s. 4(1) of the AMLATFPUA.

[54] In light of the foregoing considerations, this court finds that a sufficient F connection exists between the third respondent and 1MDB. The evidence supports the conclusion that the funds currently held by the fourth and fifth respondents are linked to an offence under sub-s. 4(1) of the AMLATFPUA. Accordingly, the applicant has established, on a balance of probabilities, that the prohibition order sought under s. 53 of the AMLATFPUA is justified.

G *Whether The Corporate Veil Should Be Pierced*

[55] The third respondent posits that it is an independent legal entity, separate from the first respondent and other companies within the PetroSaudi corporate structure. It contends that the principle of separate corporate entity should be upheld and that there is no basis to pierce the corporate veil. The H third respondent further argues that it was incorporated solely for the purpose of operating drilling rigs in Venezuelan territorial waters and had no involvement in the alleged fraudulent misappropriation of 1MDB funds. It highlights that its incorporation took place on 31 March 2010, after the alleged fraudulent activities concerning 1MDB had already occurred. On this I basis, it submits that it cannot be linked to any offence related to 1MDB.

[56] The principle of separate legal personality is indeed a fundamental principle of company law. This principle, established in the seminal case of *Salomon v. A Salomon & Co Limited* [1897] AC 22; [1896] 11 WLUK 76, affirms that a company has a distinct legal identity separate from its shareholders and directors. However, this principle is not absolute. Courts have recognised that in certain circumstances, it is appropriate to lift or pierce the corporate veil to prevent the misuse of corporate structures for improper purposes.

[57] In *Prest v. Petrodel Resources Ltd* [2013] 2 AC 415, the UK Supreme Court, per Lord Sumption, outlined two key principles that justify piercing the corporate veil, the concealment principle and the evasion principle. Under the concealment principle, courts are permitted to look behind the corporate structure to uncover the true nature of the facts being concealed. Under the evasion principle, the corporate veil may be disregarded if a person, under an existing legal obligation or liability, deliberately evades or frustrates that obligation by interposing a company under their control.

[58] This approach has been endorsed by the Malaysian Federal Court in *Gurbachan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals* [2015] 1 CLJ 719; [2015] 1 MLJ 773; [2015] 2 AMR 1; [2014] AMEJ 1537; [2015] 1 MLRA107. In that case, one of the questions posed was whether a court is entitled to lift the corporate veil of a company in order to do justice despite it not being the pleaded or argued case of the claimants that the company concerned was used as an engine of fraud. In answering the poser in the affirmative, the Federal Court affirmed that while the separate legal personality of a company is a well-established doctrine, the court is entitled to disregard this separateness where there is evidence of improper conduct, fraud or an abuse of corporate structure.

[59] In delivering the judgment of the Apex Court, His Lordship the Right Honourable Richard Malanjum CJ (Sabah & Sarawak) (later CJ) held as follows:

> (10) The court would lift the corporate veil of a corporation if such corporation was set up for fraudulent purposes, or where it was established to avoid an existing obligation or even to prevent the abuse of a corporate legal personality.

[60] In the present case, the evidence before this court suggests that the corporate structure of the PetroSaudi group, including the incorporation of the third respondent, may have been designed, at least in part, to obscure the connection between the drilling operations and the 1MDB funds that were used to finance them. The timing of the third respondent's incorporation, occurring after the alleged fraudulent misappropriation of 1MDB funds, does not preclude the possibility that it was established as part of a continuing

scheme to facilitate the laundering of illicit proceeds. The corporate structure itself does not negate the need for scrutiny where there is reason to believe that it was utilised as a mechanism to disguise the movement of tainted funds.

[61] Moreover, the evidence establishes that the first respondent is the ultimate beneficial owner of the PetroSaudi group of companies, including the third respondent. The 2010 and 2014 bond offering memoranda exhibited in the affidavits reveal that PetroSaudi Oil Services Limited ("PSOSL") and its subsidiaries, including the third respondent, presented consolidated financial statements. This indicates that these entities were treated as a single economic unit despite being separate legal entities. The financial structure and operational integration of these companies militate against the contention that the third respondent functioned as a wholly independent entity.

[62] The principle that courts may disregard corporate separateness where there is impropriety is also affirmed in *R v. Seager; R v. Blatch* [2010] 1 WLR 815. At para. [76], His Lordship Aikens LJ stated:

> There was no major disagreement between counsel on the legal principles by reference to which a court is entitled to 'pierce' or 'rend' or 'remove' the 'corporate veil'. It is 'hornbook' law that a duly formed and registered company is a separate legal entity from those who are its shareholders and it has rights and liabilities that are separate from its shareholders: *Salomon v. A Salomon & Co Ltd* [1897] AC 22 ... A court can 'pierce' the carapace of the corporate entity and look at what lies behind it only in certain circumstances. It cannot do so simply because it considers it might be just to do so. Each of these circumstances involves impropriety and dishonesty. The court will then be entitled to look for the legal substance, not just the form.

[63] The principles articulated in the foregoing authorities are directly relevant to the present case. The evidence indicates that the corporate structure of the PetroSaudi group was not merely a legitimate business arrangement but was instead utilised in a manner that concealed the true origins and movement of funds. The third respondent's role within this structure cannot be viewed in isolation. The transactions involving the Discoverer and Saturn, the flow of funds from 1MDB and the financial integration of PSOSL and its subsidiaries all point to a broader scheme.

[64] In light of the evidence presented, this court finds that there are sufficient grounds to look beyond the separate legal personality of the third respondent. This is not necessarily a case that requires a formal piercing of the corporate veil. Rather, it is a case where the court recognises that the corporate structure itself does not shield the third respondent from scrutiny under s. 53 of the AMLATFPUA. If the funds generated by the third respondent's drilling operations are demonstrably linked to an offence under sub-s. 4(1), the prohibition order sought by the applicant remains justified notwithstanding the corporate separateness of the third respondent.

Whether The Drilling Contract Was For A Lawful Economic Activity

[65] The third respondent places significant emphasis on the argument that its drilling contract with PDVSA was for a legitimate economic activity. It contends that the revenues derived from this contract are entirely lawful. In support of this position, the third respondent relies on the affidavit of the investigating officer who acknowledged that the drilling contract for PetroSaudi Saturn is for lawful economic activity and that the specific drilling contract involving PetroSaudi Saturn and PDVSA is legitimate and the monies flowing therefrom is similarly legitimate. The third respondent argues that this admission is sufficient to establish that the funds it generated from the drilling operations are untainted by any illegality.

[66] However, the mere fact that the drilling contract itself was for a lawful economic activity does not necessarily preclude the possibility that the funds derived from it are linked to a money laundering offence. The nature of money laundering is such that illicit funds are frequently funnelled through seemingly legitimate businesses and transactions in order to obscure their origins. The existence of a valid contract does not, by itself, negate the possibility that the underlying capital used to establish and sustain the operations was derived from unlawful activity.

[67] Subsection 4(1) of the AMLATFPUA criminalises a broad range of activities involving the proceeds of unlawful activity. These include engaging in transactions that involve such proceeds and acquiring, receiving, possessing or using them. If the drilling operations in question were established using funds that were fraudulently misappropriated from 1MDB, then any revenues generated by these operations could constitute proceeds of an unlawful activity.

[68] This remains the case even if the drilling itself was conducted in full compliance with applicable laws and contractual obligations. The key consideration is not whether the drilling operations were inherently lawful, but whether the funds that financed them were tainted by their origins.

[69] If the evidence demonstrates that the drilling operations that generated the funds concerned in the arbitration award were financed, at least in part, with funds that were fraudulently misappropriated from 1MDB, then the resulting revenues may be classified as proceeds of unlawful activity. This holds true even if the actual drilling operations were conducted lawfully. The essential issue is the nexus between the funds used to establish the operations and the alleged criminal conduct underlying their origin.

[70] The applicant has presented substantial evidence to establish this connection. Specifically, the applicant has traced the financial flow of 1MDB funds, demonstrating that the drilling operations were made possible through capital that originated from IMDB's misappropriated investments. The evidence shows that the Discoverer was purchased using funds that can be

directly traced to IMDB's USD300 million investment in JVCo. Additionally, the acquisition of the Saturn was facilitated by the existence of the Discoverer contract, which was itself capitalised using 1MDB funds. This sequence of transactions indicates that the financial foundation of the third respondent's drilling operations was significantly reliant on capital derived from 1MDB.

[71] In view of this evidence, this court is satisfied that the funds held by the fourth and fifth respondents are linked to an offence under sub-s. 4(1) of the AMLATFPUA. The fact that the drilling contract itself constituted a lawful economic activity does not override the critical finding that the operations were established, at least in part, using funds that can be traced to the fraudulent misappropriation of 1MDB assets. Consequently, the statutory requirements for issuing a prohibition order under s. 53 of the AMLATFPUA are satisfied.

The Nature Of Section 53 Applications

[72] It is necessary to emphasise that an application under s. 53 of the AMLATFPUA is a preliminary measure intended to maintain the *status quo* while further legal proceedings are pursued. This provision serves as an interim safeguard to prevent the dissipation of assets that may ultimately be subject to forfeiture. A prohibition order issued under this section does not constitute a final adjudication of the rights of the parties. Instead, it functions as a protective mechanism to ensure that potentially illicit assets remain within the court's jurisdiction until the appropriate legal determinations are made.

[73] Given the interim nature of a prohibition order under s. 53, the legal threshold for granting such an order is lower than that required for a final forfeiture order. The court is not required to establish, beyond a reasonable doubt, that the subject property is linked to an offence. Instead, the court need only be satisfied, on the balance of probabilities, that the property falls within one of the statutory categories set out in sub-s. 53(1) of the AMLATFPUA. If the applicant is able to demonstrate, through evidence, that the subject property is more likely than not to be linked to an offence, it is mandatory for the court to issue the prohibition order as prescribed by sub-s. 53(2).

[74] The primary objective of such an order is to prevent the dissipation of assets that may be subject to future forfeiture. It is a preventive measure, not a punitive sanction. The prohibition order ensures that property suspected of being linked to unlawful activity remains available for potential recovery under subsequent legal proceedings. The legislative intent behind s. 53 is to prevent circumvention of forfeiture provisions by restricting dealings with assets suspected to be the proceeds of crime.

[75] In light of the foregoing principles, this court finds that the applicant has satisfied the legal threshold required for the issuance of a prohibition order under s. 53 of the AMLATFPUA. The evidence presented, while not necessarily conclusive proof of a money laundering offence, is sufficient to establish, on the balance of probabilities, that the funds held by the fourth and fifth respondents are linked to such an offence. The nature and flow of transactions, as outlined in the applicant's affidavits, demonstrate a reasonable basis to conclude that the subject property falls within the statutory parameters of s. 53(1).

[76] Upon thorough consideration of the applicant's application, the supporting affidavits and the submissions advanced by both the learned Deputy Public Prosecutor and learned counsel, this court is satisfied that the evidential burden under sub-s. 53(2)(a) of the AMLATFPUA has been met. Accordingly, the application by the Public Prosecutor, as set out in encl. (1), is hereby allowed in respect of prayers 1(a) and 1(b). The prohibition order shall be issued in the terms sought by the applicant.

Conclusion

[77] In conclusion, this court finds that the applicant has successfully demonstrated, on the balance of probabilities, that the funds currently held by the fourth and fifth respondents constitute the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1) of the AMLATFPUA. As a result, these funds fall squarely within the category specified in sub-s. 53(1)(a) of the AMLATFPUA. Given these findings, a prohibition order under s. 53 of the AMLATFPUA is both necessary and justified. As such, the application is allowed. This court hereby grants the prohibition order in terms of prayers 1(a) and 1(b) of the notice of motion filed in encl. 1.